



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

***FOR THE CALICO SOLAR PROJECT
AMENDMENT***

Docket No. 08-AFC-13C

COMMITTEE SCHEDULING, BRIEFING, AND PROCEDURES ORDER

On April 20, 2011, the Energy Commission Siting Committee convened a public site visit and conducted an Informational Hearing in Barstow, California regarding Calico Solar, LLC's Petition to Amend. During the hearing, the Committee heard from the parties, would-be intervenors, and members of the public about the scope of the proposed modifications to the approved Calico Solar Project, known issues and impacts relating to the proposed project modifications, and the need for completed studies and further environmental evaluation.

Scheduling Order

The attached Committee Schedule establishes recommended deadlines for completing critical path items. The Committee may modify the schedule at any time upon either its own motion or a party's motion.

Briefing Topics

1. **Commission Jurisdiction.** As discussed during the April 20, 2011 Informational Hearing, questions have arisen regarding both the Energy Commission's role as the lead agency under the California Environmental Quality Act (CEQA) and the scope of the Energy Commission's licensing jurisdiction over the project modifications. The Siting Committee therefore invites the parties to brief the following legal issues:
 - a. Does the Energy Commission have authority to consider approval of the proposal to reduce electricity generated from Sun Catcher solar thermal technology from 663.5 MW to 100.5 MW?
 - b. Does the Energy Commission have authority to consider approval of the proposal to install photovoltaic (PV) facilities generating 563 MW on the Calico Solar Project site? If so, explain whether this is because 1) the PV facilities are part of a thermal power plant; 2) the PV facilities are either a related or appurtenant facility; or 3) the PV facilities are located on a site the CEC has licensed. Are there other grounds for the Energy

Commission authority to consider approval of the project amendments? If so, please specify what that authority is and how it applies to the proposal.

- c. May the Energy Commission act as the lead agency to perform the required CEQA evaluation over both the solar thermal and photovoltaic components of the proposed project modifications? Are there any legal impediments to such an approach?
- d. In the Energy Commission's consideration of the proposed amendment to its permit, what are the Energy Commission's responsibilities under CEQA with respect to the proposal to install PV facilities?
- e. Are there any other considerations relevant to the Energy Commission's jurisdiction with respect to the proposal?

Briefs should include discussion and reference to applicable statutory, regulatory law, and decisional law. Applicable statutes include but are not limited to Public Resources Code sections 25110, 25120, and 2550. Applicable regulations include but are not limited to California Code of Regulations, title 20, section 1702.

Applicable decisional law includes but is not limited to judicial decisions and Opinions of the Office of Attorney General of the State of California relating to a public agency's possession not only of expressly granted powers but also such implied powers as are necessary and appropriate to accomplish the express power. Principles of statutory interpretation may also be applicable.

2. Baseline of Environmental Conditions. Under CEQA, the determination of whether impacts are significant necessarily requires an evaluation of environmental conditions against which to compare a project's anticipated impacts. These conditions are commonly referred to as the "baseline." During the April 20, 2011 Informational Hearing, the parties, would-be intervenors, and public offered opinions regarding the baseline applicable to overall evaluation of the proposed modifications and evaluation of biological resources in particular. The Siting Committee therefore invites the parties to brief the following questions:

- a. What is the appropriate baseline on environmental conditions on which to base the Energy Commission's CEQA analysis, and why?
- b. Are any of the conditions identified in CEQA Guidelines section 15162¹ present? If so, what are they, and which portions of the Energy Commission's December 2010 Calico Solar Project decision would the Commission be required to re-evaluate?

¹ Section 15162 describes the circumstances under which a lead agency must prepare a subsequent EIR for a project even though the lead agency previously certified a prior EIR or adopted a negative declaration for the project.

Opening briefs on topics 1 and 2 shall be served on the Proof of Service List and docketed by no later than 5:00 p.m. on May 23, 2011. Reply briefs shall be served on the Proof of Service List and docketed by no later than 5:00 p.m. on June 3, 2011.

3. **Evidentiary Hearings.** The Siting Committee has discretion to allow or prohibit evidentiary hearings in this amendment proceeding. The Committee therefore invites the parties to brief whether and how evidentiary hearings would be beneficial.

The Siting Committee will set deadlines for opening and reply briefs as this matter progresses.

Deadline for Filing Petitions to Intervene

The Siting Committee hereby **ORDERS** that all Petitions to Intervene shall be served on the Proof of Service List and docketed by no later than 4:30 p.m. on June 27, 2011. The Committee further **ORDERS** that any opposition to a Petition to Intervene shall be served on the Proof of Service List and docketed by no later than 5:00 p.m. two business days after the petition is served.

Propounding Data Requests

At the April 20, 2011 Informational Hearing, several parties noted that studies required in the original project's Conditions of Certification have not been completed. The parties' concerns regarding more project information should be addressed through the data request process. The Siting Committee hereby **ORDERS** that data requests may be propounded only upon Calico Solar, LLC and any such requests may be propounded only after the Committee issues written findings of good cause.

The Committee, in its discretion, may limit the number of allowed data requests, scope of the data requests, and time allocated for responding to data requests. All approved data requests shall be served by no later than 5:00 p.m. on May 31, 2011.

Staff served data requests on Calico Solar, LLC on April 15, 2011, with responses due on May 9, 2011 (http://www.energy.ca.gov/sitingcases/calicosolar/compliance/2011-04-15_CEC_Data_Requests_Set_01.pdf).

Status Conferences

In Staff's Issues Identification Report filed on April 14, 2011, Staff asked the Siting Committee to conduct telephonic Status Conferences every four weeks beginning during the week of May 9, 2011, for the purpose of giving the parties a public forum to discuss status in this proceeding. The Committee **GRANTS** Staff's request and has included Status Conference dates in the attached Committee Schedule.

Electronic Filing

In Staff's Issues Identification Report filed on April 14, 2011, Staff requested leave to electronically file its documents in this proceeding. As specified in the Committee Order Adopting Filing and Electronic Documents Directives dated May 2, 2011, the Committee **GRANTS** all parties leave to electronically file documents.

Public Participation

The Energy Commission Public Adviser is available to assist the public in participating in the application review process. For those individuals who require general information on how to participate, please contact the Public Adviser's Office at (916) 654-4489 or 1-800-822-6228 or e-mail: **[publicadviser@energy.state.ca.us]**.

If you have a disability and need assistance to participate in any scheduled event, contact Lourdes Quiroz no less than five days prior to the hearing at (916) 654-5146 or e-mail: **[lquiroz@energy.state.ca.us]**.

Information

Questions of a legal or procedural nature should be directed to Kourtney Vaccaro, the Hearing Adviser, at (916) 654-4328 or e-mail: **[kvaccaro@energy.state.ca.us]**.

Technical questions concerning the project should be addressed to Craig Hoffman, the Staff Project Manager, at (916) 654-4781 or e-mail: **[choffman@energy.state.ca.us]**.

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989 or e-mail: **[mediaoffice@energy.state.ca.us]**.

Information concerning the status of the project, as well as notices and other relevant documents may be viewed on the Energy Commission's Internet web page at: **[<http://www.energy.ca.gov/sitingcases/calicosolar/compliance/index.html>]**.

Dated: May 2, 2011, at Sacramento, California.



KAREN DOUGLAS
Commissioner and Presiding Member
Siting Committee



ROBERT B. WEISENMILLER
Chairman and Associate Member
Siting Committee

COMMITTEE SCHEDULE
FOR THE
CALICO SOLAR PROJECT AMENDMENT
(09-AFC-13C)

ACTIVITY	DATE
Petition to Amend Filed	3/22/2011
Staff Publishes Identification Report	4/14/2011
Staff Issues Data Requests to Calico Solar, LLC	4/15/2011
Informational Hearing and Public Site Visit	4/20/11
Calico Solar, LLC Issues Outstanding Studies and Data Responses	On or about 5/9/2011
Status Conference	On or about 5/13/2011
Last Day to File Opening Briefs on Commission Jurisdiction and Baseline Environmental Conditions	5/23/2011 (by 5:00 p.m.)
Last Day to Issue Committee-Approved Data Requests	5/31/2011 (by 5:00 p.m.)
Last Day to File Reply Briefs on Commission Jurisdiction, Baseline Environmental Conditions, and Evidentiary Hearings	6/3/2011 (by 5:00 p.m.)
Status Conference	On or about 6/10/2011
Staff Publication of Staff Assessment	On or about 6/24/2011
Last Day to File Petition to Intervene	6/27/2011 (by 4:30 p.m.)
Status Conference	On or about 7/8/2011
Staff Publication of Responses to Comments/Amended Staff Assessment	TBD*
File Briefs on Benefits of Evidentiary Hearings	TBD
Evidentiary Hearings [<i>if they occur</i>]	TBD*
Committee Publication of PMPD	August 2011
Commission Decision	September 2011

* The assigned Committee will determine this part of the schedule.